IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 33247 of 2005(G)

OS.81/2001 of MUNSIFF COURT, TIRUR

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PETITIONER:

NOOR JAHAN ALIAS KHAIRUNEESA,
D/O.ASSANKUTTY,
VELLIYATH VALIYAPEEDIAKKAL HOUSE,
CHENNARA, TIRUR TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. KUNHIKKAMMU, S/O.UMMER,
KULANGARA VEETTIL, MUTTANNUR,
PURATHUR, TIRUR TALUK,
MALAPPURAM DISTRICT.

2. PETTOORI KUTTIMAN, S/O.PONNAN,
MUTTANNUR, PURATHUR,
TIRUR TALUK,
MALAPPURAM DISTRICT.

3. HUSSAIN, S/O.KUNJAKKUTTY,
KAKKIDIPARAMBATH,
CHENNARA, TIRUR TALUK,
MALAPPURAM DISTRICT.

4. SAINABA, D/O. - DO - - DO -

5. SUHARA, D/O. - DO - - DO -

6. ZEENATH, - DO - - DO -

7. ASHRAF, S/O. - DO - - DO -

8. ALI, S/O. ALAVI,
- DO - - DO -

(R3 TO R7 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 9.1.2006 IN W.P.(C))

BY ADV. SRI.K.RAMACHANDRAN
SRI.K.MOHAMMED FAISAL NAHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 33247/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S. 81/01 ON THE FILE OF THE COURT OF MUNSIFF OF TIRUR DATED 29.3.2001

EXT.P2: COPY OF THE WRITTEN STATEMENT IN O.S. 81/01 ON THE FILE OF THE COURT OF MUNSIFF OF TIRUR DATED 29.9.2001

EXT.P3: COPY OF THE PLAN AND REPORT ON 31..3.2001 BY THE COMMISSIONER.

EXT.P4: COPY OF THE WORK MEMO FILED BY THE PLAINTIFF BEFORE THE COMMISSIONER DATED 7.11.2002

EXT.P5: COPY OF THE PLAIN AND REPORT DTAED 6.1.2003 BY THE COMMISSIONER.

EXT.P6: COPY OF the ORDER DATED 14.1.2003 IN I.A. NO. 67/03 IN OS 81/01 COURT OF THE MUNSIFF OF TIRUR.

EXT.P7: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP NO. 2137/03 DATED 7.7.2003

EXT.P8: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A. NO.2095/05 DATED 1.10.2005

EXT.P9: COPY OF THE ORDER IN I.A. NO. 2095/05 IN OS NO. 81/01 DATED 28.10.2005 COURT OF MUSNFIF OF TIRUR.

PIUS C. KURIAKOSE, J.

W.P.(C) NO.33247 of 2005

Dated this the 5th day of June 2007

JUDGMENT

Ext.P9 order passed by the learned Munsiff on an application submitted by the petitioner/plaintiff for remittance of the Commission report and plan is under challenge in this proceedings under Article 227.

2. Heard both sides. The learned counsel for the petitioner submits that what was sought for was only a remittance of the report and plan to the Commissioner so that the Commissioner could submit a report regarding the aspects mentioned in the work memo to file which the petitioner had already been permitted by the court. I am not persuaded on the submission of the learned counsel to agree that Ext. P9 order warrants corrections in this court's supervisory jurisdiction under Article

227. As noticed by the learned Munsiff, the Commission Report was filed on 6.1.2003 and even at the time when the present application for remittance of the report was filed i.e. which is in 2005 the petitioner had not filed any objection to the Commission report. Earlier objection filed by the very same petitioner for setting aside the report had been dismissed by the learned Munsiff vide order in I.A. No. 67/2003 and that order had become final.

Under the above circumstances, Ext.P9 order, in my view is justified. I confirm Ext.P9. However, though no objections have been filed by the petitioner to the commission report, I permit the petitioner to cross-examine the Commissioner with reference to the aspects mentioned in the work memo stated to have been filed by the petitioner before the Commissioner. The Commissioner is also permitted to ask such question in cross examination as would be necessary for bringing forth the relevant aspects covered by the work memo. If the court below is convinced on the basis of the evidence given by

the Commissioner that there is warrant for directing the Commissioner to make a fresh visit for reporting on the aspects mentioned in the work memo confirmation of Ext.P9 by this court will not stand in the way.

PIUS C. KURIAKOSE,
JUDGE.

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